IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4587 of 1998
with
Civil Application No.9957 of 2001
For Approval and Signature:
Hon'ble MR.JUSTICE P.B.MAJMUDAR

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
KIRITSINH BHAGWATSINH RANA

Appearance: MRS VASAVDATTA BHATT for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR
Date of decision: 14/09/2001
ORAL JUDGEMENT

With the consent of the parties, main Special Civil Application No.4587 of 1998 is taken up for final hearing today.

As per the averment in paragraph 3.2, the workman remained absent on the following occasions :-

(1) From 15.6.1985 to 19.6.1985;
(2) From 30.6.1985 to 10.7.1985;
(3) On 22.5.1985 and from 28.5.1985 to 29.5.1985;
(4) From 12.10.1985 to 30.10.1985;
(5) From 5.8.1985 to 6.8.1985 and from 9.8.1985 to 14.8.1985;
(6) From 1.6.1985 to 5.6.1985.

For remaining absent habitually on the aforesaid occasions, after conclusion of the enquiry, the employer

subjected the workman to various penalties, viz., stoppage of annual increments for six months, three months, six months, three years, six months and one year, respectively.

The concerned workman raised Industrial Dispute, which was numbered as Reference (ITR) No.142 of 1993. The Labour Court, Rajkot set aside the penalty in toto and allowed the Reference. The Labour Court came to the conclusion that it is not possible to come to the conclusion whether any prior report was given by the employee or not. According to the Labour Court, the Corporation had not remained present before the Labour Court nor have they produced papers of enquiry. The Labour Court, therefore, came to the conclusion that it is not possible for the Court to arrive at a conclusion that the concerned workman was in the habit of remaining absent unauthorisedly.

In my view, once it is proved in the departmental enquiry that misconduct against the workman was established, it cannot be said that it was a case of no evidence. It was not proper on the part of the Labour Court to exonerate the employee completely on the ground that the Corporation has not led any evidence before the Labour Court.

At the time of hearing of this Special Civil Application, even the learned Advocate for the workman has clearly stated that an appropriate penalty can be imposed on the workman and he will have no objection. In the facts and circumstances of the case, therefore, it will be in the interest of justice that some punishment is imposed on the workman so that he may be careful in future and it will have some deterrent effect on him.

In the facts and circumstances of the case, therefore, I set aside the order of the Labour Court and the concerned workman will be subjected to withholding of two increments with future effect. In that view of the matter, the order of the Labour Court is set aside and it is modified to the aforesaid extent. The effect of this order will be that the workman will be subjected to the penalty of withholding of two increments with future effect. Rule is accordingly made absolute with no order as to costs.

In view of the order passed in the main Special Civil Application, no order need be passed in Civil Application No.9957 of 2001.

14th September, 2001 (P.B. Majmudar, J.)

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(apj)